

2007

Hetch Hetchy and the Paradoxes of Restoration

Brian E. Gray

UC Hastings College of the Law, grayb@uchastings.edu

Follow this and additional works at: http://repository.uchastings.edu/faculty_scholarship



Part of the [Water Law Commons](#)

Recommended Citation

Brian E. Gray, *Hetch Hetchy and the Paradoxes of Restoration*, 13 *Hastings W.-Nw. J. Envtl. L. & Pol'y* 211 (2007).

Available at: http://repository.uchastings.edu/faculty_scholarship/179

This Article is brought to you for free and open access by UC Hastings Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcusc@uchastings.edu.



Faculty Publications

UC Hastings College of the Law Library

Author: Brian E. Gray

Source: Hastings West–Northwest Journal of Environmental Law & Policy

Citation: 13 Hastings W.–Nw. J. Env'tl. L. & Pol'y 211 (2007).

Title: *Hetch Hetchy and the Paradoxes of Restoration*

Originally published in HASTINGS WEST–NORTHWEST JOURNAL OF ENVIRONMENTAL LAW & POLICY. This article is reprinted with permission from HASTINGS WEST–NORTHWEST JOURNAL OF ENVIRONMENTAL LAW & POLICY and University of California, Hastings College of the Law.

Hetch Hetchy and the Paradoxes of Restoration

Brian E. Gray*

Our topic this evening is Hetch Hetchy, the valley that John Muir called the "Tuolumne Yosemite," which has served for the past 75 years as San Francisco's principal source of water supply. Only a decade ago, Hetch Hetchy was a backwater — little known, seldom visited, and largely removed from national political attention and California water politics.¹ Because of Ron Good, his colleagues at Restore Hetch Hetchy and Environmental Defense, and their new friend Harrison Ford, however, the public's awareness of Hetch Hetchy certainly has changed.²

Tonight, I would like to address two aspects of the debate — which has now entered its second century — over the proper use of this beautiful and beautifully emblematic valley: (1) how it came to be dammed, and (2) what

* Professor of Law, University of California Hastings College of the Law. This article is based on a keynote speech presented to the California Water Policy Conference, sponsored by the Public Officials for Water and Environmental Reform, at the Wilshire Grand Hotel, Los Angeles, California, on November 16, 2006. The keynote address honors the late Marc Reisner.

1. For an overview of San Francisco's quest to develop Hetch Hetchy Valley and Congress' enactment of the Raker Act, which authorized the flooding of the valley for domestic water supply and generation of hydroelectric power, see NORRIS HUNDLEY, JR., *THE GREAT THIRST*, 171-94 (University of California 2001) (1992); Brian E. Gray, *The Battle for Hetch Hetchy Goes to Congress*, 6 HASTINGS W.-NW. J. ENVTL. L. & POL'Y 199 (2000).

2. See RESTORE HETCH HETCHY, *FINDING THE WAY BACK TO HETCH HETCHY VALLEY: A VISION OF STEPS TO RESTORE HETCH HETCHY VALLEY IN YOSEMITE NATIONAL PARK AND TO REPLACE WATER AND ENERGY SUPPLIES* (2005), available at http://www.hetchhetchy.org/pdf/restore_hh_full_report_sept_2005.pdf; ENVIRONMENTAL DEFENSE, *PARADISE REGAINED: SOLUTIONS FOR RESTORING YOSEMITE'S HETCH HETCHY VALLEY* (2004), available at http://www.environmentaldefense.org/documents/4044_hetchhetchyrestored_frontmatter.pdf. Restore Hetch Hetchy's web pages contain a description of the restoration efforts and photographs of the valley, as well as links to other restoration studies. See <http://www.hetchhetchy.org/index.html>. Harrison Ford has narrated a documentary about the restoration movement, titled "Discover Hetch Hetchy." See Phillip Matier & Andrew Ross, *Harrison Ford Jumps Into Fray Over Hetch Hetchy Reservoir*, S.F. CHRON., Aug. 20, 2006, at B1.

Two excellent books on the history of the Hetch Hetchy controversy also have been published in the past several years: ROBERT W. RICHTER, *THE BATTLE OVER HETCH HETCHY: AMERICA'S MOST CONTROVERSIAL DAM AND THE BIRTH OF MODERN ENVIRONMENTALISM* (Oxford Univ. Press 2005); JOHN WARFIELD SIMPSON, *DAM! WATER, POWER, POLITICS, AND PRESERVATION IN HETCH HETCHY AND YOSEMITE NATIONAL PARK* (Pantheon Books 2005).

the early 20th century debate tells us about the contemporary controversy over restoration of the valley.

At its heart, the great battle over Hetch Hetchy was ultimately a contest between two visions of nature, in many ways equally compelling, formed by men who were visionaries themselves. San Francisco Mayor James Phelan looked at his city and imagined that it might become the Paris of the Pacific — the greatest city of what someday would be the greatest state in the grandest country on earth. John Muir had his own vision for his adopted state and country, and that vision was embodied in the magnificent glacial valleys that Nature's God had carved into the spine of the Sierra Nevada.

Phelan envisaged that the waters of the Sierra Nevada would be needed to build what would become the modern Bay Area, from Silicon Valley and the homes that line the Peninsula, to its great universities and the shimmering city that Mayor Phelan helped to create. It was a vision shared by the leaders of Los Angeles, who (as Phelan was acutely aware) were endeavoring to secure their own water supply from the Sierra Nevada as well.³ Muir foresaw that to maintain those qualities that made San Francisco and California the envy of all who set eyes upon them, it was necessary to preserve — if possible, as wilderness — those resources that made California unique. The Yosemite National Park that Muir and Robert Underwood Johnson conjured up, and which Congress had formally created in 1890, was at the center of Muir's vision.⁴

San Francisco initially presumed that the inclusion of Hetch Hetchy Valley in the Yosemite National Park would be but a minor impediment to its plans. The dominant philosophy of natural resources management of the time was utilitarian conservationism, which held that the forests, mineral lands, and waters of the United States should be put to use for the benefit of the people. In the words of Gifford Pinchot, President Roosevelt's closest political advisor and creator of the United States Forest Service, "[t]he fundamental principle of the whole conservation policy is that of use, to take every part of the land and its resources and put it to that use in which it will best serve the most people"⁵

In the aftermath of the San Francisco earthquake and fire of 1906, city leaders believed that the Hetch Hetchy supply was all but assured. So strong were the city's expectations that Edward Robeson Taylor, San Francisco's mayor from 1907-1910 lamented: "Why is it that we have to struggle

3. See RIGHTER, *supra* note 2, at 45-58; SIMPSON, *supra* note 2, at 111-26.

4. See John Muir, *Features of the Proposed Yosemite National Park*, reprinted in NATURE WRITINGS 687-700 (William Cronon ed., Library Classics of the United States 1997); Gray, *supra* note 1, at 205-07.

5. *Hetch Hetchy Dam Site: Hearing on H.R. 6281, Part I, Before the H. Comm. on the Public Lands*, 63d Cong., 1st Sess. at 25 (1913).

for that which should fall into our lap?"⁶ What San Francisco failed to grasp, however, was that the political landscape was also shifting beneath it. There was a growing recognition that the managed exploitation of *all* of the natural resources of the West would neither provide the greatest good for the greatest number nor actually *conserve* those resources. The highest and best use of some resources might simply be to preserve and to protect those natural features that made them unique.

Although still few and far between, the national parks — especially Yellowstone, Yosemite, and Mesa Verde — demonstrated that preservation and promotion of tourism might be more socially desirable and economically beneficial than other uses.⁷ Indeed, during the early years of San Francisco's political efforts to obtain federal approval to dam Hetch Hetchy Valley, the most visible proponent of utilitarian conservationism — Theodore Roosevelt himself — signed the Antiquities Act and designated the Devil's Tower, the Grand Canyon, Lassen Peak, and a grove of coastal redwoods in California which he named *Muir Woods* for protection and preservation under the statute.⁸ William Howard Taft continued his predecessor's policies, adding Mount Olympus, the Oregon Caves, and Rainbow Bridge to the list of national monuments; and he signed into law the bill that designated Glacier as a national park.⁹ Perhaps most tellingly, President Taft named the Devil's Postpile — which had been excluded from Yosemite National Park in 1905 at the behest of mining interests — as a national monument to prevent the blasting of its basaltic columns into the upper San Joaquin River to form a dam.¹⁰

Three days before he was to leave office in March 1913, President Taft's Secretary of the Interior, Walter Fisher, formally rescinded federal permission for San Francisco to create a dam on the Tuolumne River at the mouth of Hetch Hetchy Valley. Fisher stated that "in view of the language of the Yosemite Reservation Act of 1890 and as a matter of broad public policy the natural condition of so important a natural curiosity or wonder as the Hetch Hetchy Valley should not be radically changed without the express authority of Congress."¹¹ Thus the battle was joined.

6. Edward Robeson Taylor, *A Lament* (1909), *quoted in* Ray W. Taylor, *Hetch Hetchy: The Story of San Francisco's Struggle to Provide a Water Supply for Her Future Needs* 90 (Ricardo J. Orozco 1926).

7. See JOHN ISE, *OUR NATIONAL PARK POLICY* 13-96, 163-70 (Johns Hopkins Press 1961).

8. *Id.* at 156-57.

9. *Id.* at 157-58.

10. *Id.* at 159.

11. UNITED STATES DEPARTMENT OF THE INTERIOR, *PUBLIC LANDS DECISIONS*, Vol. 41, at 561, 566 (Government Prtg. Office 1913).

San Francisco responded with a multifaceted set of arguments, which Congress considered during the summer and fall of 1913. Its affirmative case and the preservationists' defense of the park and valley resound in remarkably modern tones.

The principal task for San Francisco was to persuade a majority of Congress that its needs for additional water were compelling and that Hetch Hetchy Valley afforded the highest quality water at the lowest cost. To accomplish this, San Francisco retained the noted Boston civil engineer, John R. Freeman, to prepare a comprehensive report on the Hetch Hetchy proposal. The "Freeman Report" resembles an Environmental Impact Statement in that it considers an array of alternative sources while never straying from the "project alternative" as superior because of cost, water quality, source protection, competing water rights, ease of delivery to the Bay Area, hydroelectric power generation, and even mitigating environmental benefits.¹² Freeman evaluated thirteen alternative sources to the Hetch Hetchy Project, including the Sacramento and McCloud Rivers (with a point of diversion at Rio Vista); the Eel River; the Yuba and Feather Rivers; the American, Mokelumne, Cosumnes, and Stanislaus Rivers (in various combinations with transbasin diversion to the Tuolumne River system); and even Lake Tahoe.¹³ It was a litany of California's modern water supply systems. A less partisan analysis prepared by the Army Corps of Engineers agreed that Hetch Hetchy was the best source of water for San Francisco, but only for the economic reasons that the project could deliver water to the Bay Area by gravity and produce some hydroelectric power along the way.¹⁴

San Francisco officials, joined by Gifford Pinchot and other supporters, also challenged the preservationists' assertion that the project would degrade the environment of the Yosemite National Park. Rather, they urged that a high mountain "lake" would be equally (if not more) beautiful than the little used, "mosquito-infested" valley.¹⁵ The proponents of the Hetch

12. JOHN R. FREEMAN, *THE HETCH HETCHY WATER SUPPLY FOR SAN FRANCISCO* (Rincon Publishing 1912).

13. *Id.* at 156-160.

14. ADVISORY BOARD OF ARMY ENGINEERS, *HETCH HETCHY VALLEY: REPORT TO THE SECRETARY OF THE INTERIOR ON INVESTIGATIONS RELATIVE TO SOURCES OF WATER SUPPLY FOR SAN FRANCISCO AND BAY COMMUNITIES* (Government Ptg. Office 1913).

15. Pinchot wrote that he was "fully persuaded that . . . the injury . . . by substituting a lake for the swampy floor of the valley . . . is altogether unimportant compared with the benefits to be derived from its use as a reservoir." Gifford Pinchot, *quoted in* JAMES H. LEONARD, *SAN FRANCISCO WATER AND POWER 9* (Hetch Hetchy Water & Power 1979). The Freeman Report echoed this utilitarian argument: "The flooding of the valley floor, giving in its place a deeply sheltered lake with an outlet so planned that the bottom could never again become uncovered, would present features different from anything found in Yosemite or elsewhere in California. The flooding of the

Hetchy Project also portrayed the preservationists as elitists, who would claim as their own a valley that could be used for the benefit of thousands of Bay Area residents in need of water and inexpensive power. As Freeman asked rhetorically in his report: "Should the cities of Greater San Francisco be compelled to spend some ten million or twenty million dollars extra for another less desirable source of domestic water, simply in order that ten or twenty solitude lovers may have this beautiful valley mostly to themselves?"¹⁶

The preservationists were led before Congress by Robert Underwood Johnson — the former editor of *Century Magazine* and Muir's old friend and compatriot from the earlier battles to create and protect the Yosemite National Park. Johnson's simple argument was that the inclusion of Hetch Hetchy Valley in Yosemite National Park in 1890 should preclude its use as a reservoir.¹⁷ This claim — which has served as an ineluctable defense against World War II timber cutting in Olympic National Park, dams in the Grand Canyon, and oil drilling in the Alaska National Wildlife Refuge — failed in the case of Hetch Hetchy and Yosemite because Congress had not yet developed a coherent governing philosophy for the national parks.¹⁸

Many members of Congress regarded Yosemite National Park as simply a part of the federal public lands, similar to the adjoining national forests, to be used for utilitarian purposes to provide the greatest good for the greatest number.¹⁹ Indeed, in a poignant note of irony, Congress turned on

margins and the stocking of the lake with trout would cure the mosquito pest and would thus double or perhaps treble the length of the season in which one can visit the valley with pleasure." FREEMAN, *supra* note 12, at 148-49.

16. FREEMAN, *supra* note 12, at 60.

17. Johnson argued in his testimony to the Senate Committee: "This is a revolution in legislation. This is the first time, so far as I know, that the Congress of the United States has turned its back and gone in the other direction from conservation. . . . There is something deeper in this matter than the question of whether you are going to destroy the great valley." The fundamental question is "whether you are going to expose all the national parks to invasion on similar pretexts. . . . This is a crisis." *Hetch Hetchy Reservoir Site: Hearing on H.R. 7207 Before the S. Comm. on Public Lands*, 63d Cong., 1st Sess. 33 at 38-39 (1913).

18. See RODERICK NASH, *WILDERNESS AND THE AMERICAN MIND*, 200-37 (3rd ed., Vail-Ballou Press 1982) (1967).

19. In its report to the House of Representatives accompanying the Hetch Hetchy legislation, the House Committee summarized this philosophy:

Conserving the natural resources. What does this phrase mean? Does it mean to lock up our forests and power sites and mineral deposits until some future time, for the use of posterity, without regard for the needs of the present generation? Or does it mean to so regulate the development of these resources that they may be put to the greatest beneficial use, may yield the maximum eco-

its head the preservationists' efforts to link Hetch Hetchy Valley with the more famous and popular Yosemite Valley. In Muir's words, "Yosemite is so wonderful that we are apt to regard it as an exceptional creation, the only valley of its kind in the world; but Nature is not so poor as to have only one of anything."²⁰ Rather, Hetch Hetchy Valley is "a wonderfully exact counterpart of the Merced Yosemite, not only in its sublime rocks and waterfalls but in the gardens, groves and meadows of its flowery park-like floor."²¹ As such, Hetch Hetchy was equally worthy of preservation as its twin.

The similarities between and the close proximity of the Tuolumne and Merced valleys led a majority of Congress, however, to reach precisely the opposite conclusion. Hetch Hetchy Valley — although magnificent in its own right — was not quite so grand or beautiful as Yosemite Valley; and, given San Francisco's needs, the nation did not need to preserve both in their natural state. A (mostly) natural valley with its capstones of El Capitan and Half Dome looming over the meadows and marshes of the Merced River, juxtaposed with the beautiful granite-walled lake to the north, which also would supply water and power to the people, proved to be a compelling bargain.²²

As the battle for Hetch Hetchy was about to move to Congress, John Muir wrote: "Everybody needs beauty as well as bread, places to play in and pray in, where Nature may heal and cheer and give strength to body and soul alike."²³ Hetch Hetchy was lost because Muir and his cohorts in the fledgling preservationist movement were unable to persuade Congress of this simple fact. Yet, they planted a seed from which blossomed the modern environmental era.

Two years later, the Hetch Hetchy debacle led Congress to enact the National Park Service Act, which created a national park *system* for the fundamental purposes of protecting and preserving the "scenery and the natural and historic objects and the wildlife therein," both for the use of all the people and to leave the parks and their natural resources "*unimpaired* for the enjoyment of future generations."²⁴ The memory of Hetch Hetchy Valley was invoked to defend Dinosaur National Monument and the Grand Canyon against the Bureau of Reclamation's proposals to dam the Green and Colo-

onomic return for all the people of all generations? We incline to the latter view as being that of the Nation's leaders to-day.

H.R. REP. NO. 63-41, at 41 (1913).

20. John Muir, *Hetch Hetchy Valley*, reprinted in NATURE WRITINGS 810 (William Cronon ed., Library Classics of the United States 1997).

21. *Id.*

22. See Gray, *supra* note 1, at 231-34.

23. Muir, *supra* note 20, at 814.

24. National Park Service Act of 1916, 16 U.S.C. § 1 (2006) (emphasis added).

rado Rivers in the 1960s.²⁵ Muir's vision of a greater Yosemite National Park that would embrace a wild Tuolumne River ecosystem and free-flowing Tuolumne River served as a beacon for both the Wilderness Act of 1964²⁶ and the National Wild and Scenic Rivers Act of 1968.²⁷ And the lesson that we should not take all of nature for our own uses, simply because that is the cheapest or easiest path, is today the guiding philosophy of the Endangered Species Act.²⁸

The ghost of Hetch Hetchy also animates the debate over dam removal and restoration in places as disparate as the Elwa River, to Butte Creek, to the Kennebec River, to Glen Canyon, to the Snake River, and of course, to Hetch Hetchy Valley itself. Indeed, the influence of what Muir called the "dam damnation" of Hetch Hetchy on the movement to restore the Valley is especially interesting.²⁹ The same factors that led Congress in 1913 to authorize the project have conspired — at least to date — to thwart the contemporary efforts to remove O'Shaughnessy Dam and to return Hetch Hetchy Valley to its natural state. Although the recent California Resources Agency study concluded that restoration is feasible, it also concluded that the effort would be expensive — as much as \$10 billion.³⁰ While San Francisco could replace the lost storage with diversions from its two other project reservoirs — Cherry and Eleanor — and perhaps from New Don Pedro downstream, the change in the points of diversion would diminish both water quality and water supply reliability, reduce hydroelectric power produc-

25. See NASH, *supra* note 18, at 200-37.

26. Wilderness Act of 1964, 16 U.S.C. §§ 1131-1136 (2006).

27. *Id.* §§ 1271-1287.

28. *Id.* §§ 1531-1544.

29. Shortly after President Wilson signed the Hetch Hetchy legislation into law, Muir wrote to a friend: "As to the loss of the Sierra Park Valley it's hard to bear. The destruction of the charming groves and gardens, the finest in all California, goes to my heart. But in spite of Satan & Co. some sort of compensation must surely come out of this dark damn-dam-damnation." John Muir, Martinez, to Vernon Kellogg, Palo Alto, Dec. 27, 1913 (Sierra Club archives).

30. CALIFORNIA RESOURCES AGENCY, HETCH HETCHY RESTORATION STUDY (2006), available at http://hetchhetchy.water.ca.gov/docs/Hetch_Hetchy_Restoration_Study_Report.pdf. The cost estimates — which include replacement of San Francisco's existing water supplies and power production from O'Shaughnessy Reservoir, removal of the dam, restoration of the valley, and associated engineering, environmental review, legal, and administrative expenses — range from \$3 billion to \$9.8 billion. *Id.* at 4.

tion, and lower flood protection in the Tuolumne River watershed.³¹ In other words, Hetch Hetchy remains the city's best source of a secure and protected water supply and is today far superior to the alternatives, which no longer include the array of choices up and down the Sierra Nevada and Central Valley that were available a century ago.

Moreover, as in 1913, there is no political consensus that restoration of the valley would inure to the benefit of Yosemite National Park or the people who visit it. According to Restore Hetch Hetchy, "[m]ention Hetch Hetchy Valley to visitors to Yosemite National Park and their response is immediate: a heartfelt feeling of deep sadness for what has been lost, and a fervent hope that what has been lost can somehow be regained."³²

Yet, other equally thoughtful observers and visitors disagree. One of my students — an outspoken and committed environmentalist who took a "water law" tour of California this summer — reported to me his surprise at his divergent reactions to Hetch Hetchy and the San Joaquin River below Friant Dam. He was enthralled by the prospect of restoration of the river and its native salmon runs. Yet, he thought restoration of the valley would be a mistake. Unlike Yosemite Valley, he said, Hetch Hetchy was isolated and quiet. Hiking the trails along and above the reservoir, he experienced a sense of nature and wildness that he thought was obscured in Yosemite by the crowds, the cars and busses, and the tourist amenities. "Would you want to try to remake Hetch Hetchy," I asked, "with the hope of avoiding the distractions of Yosemite?" "No," he replied. "Too risky."³³

This points up a dilemma that the preservationists of the early 20th Century share with the restorationists of the 21st: Even in our modern era of environmental protection, we retain some of the utilitarianism of our predecessors.

31. *Id.* at 28-37, 55; see San Francisco Public Utilities Commission, State Report Highlights Enormous Costs, Challenges of Draining Hetch Hetchy (July 20, 2006), available at http://sfwater.org/detail.cfm/MC_ID/20/MSD_ID/178/C_ID/3096/ListID/2.

32. Restore Hetch Hetchy, What We Propose and Why, <http://www.hetchhetchy.org/proposal.html>.

33. Conversation with Adam Polakoff, San Francisco, California, Aug. 22, 2006. These sentiments echo San Francisco's official perspective on the aesthetic benefits of its Hetch Hetchy Project: "Die-hards who would still continue the Sierra dispute are reminded that there were other uses in mind for the Hetch Hetchy Valley at the turn of the century. In 1903-1904 a proposal to make the valley a summer resort rivaling Yosemite actually got underway, but it failed in less than a year. This failure was fortunate Thousands of back packers and trail hikers now prefer Hetch Hetchy's scenic Grand Canyon of the Tuolumne to the overdeveloped, smog filled, littered, and automobile and people clogged Yosemite Valley." Warren Hanson, *San Francisco Water and Power: A History of the Municipal Water Department and Hetch Hetchy System* 44 (San Francisco, City and County of San Francisco, 1985).

The proponents of dam removal must persuade the public — and ultimately Congress — that a reborn Hetch Hetchy Valley would be worth the restoration, water supply, water quality, water treatment, and lost hydro costs. To do so, they will have to show that the public is likely to use and to enjoy the valley. Yet, levels of public use that would justify the economic dislocations of dam removal might imperil those very qualities that the restorationists hope to re-create in the new Hetch Hetchy Valley — solitude, quietude, wildness — a 21st Century version of John Muir's "grand landscape garden, one of Nature's rarest and most precious mountain temples."³⁴

I must confess that I waver back and forth on these questions. I long ago concluded that the damming of Hetch Hetchy Valley was a mistake. The choice of the valley for San Francisco's water supply was not justified in light of the myriad alternatives available to the city at the turn of the 20th Century — alternatives that today are the sources of water for most of the state's population. Nor was the decision justified in light of Congress's inclusion of the valley in the Yosemite National Park — a designation by which Congress required the Secretary of the Interior to ensure "the preservation from injury of all timber, mineral deposits, natural curiosities, or wonders within said reservation, and their retention in their natural condition."³⁵

As a scholar and water lawyer, however, I am not yet persuaded that we should today undo this tragic decision of the past. For I do not believe that the restorationists have made the case that the benefits of dam removal — the creation of either another Yosemite Valley or the restoration of a mythical anti-Yosemite — would be worth billions of dollars, not to mention the attendant costs of diminished storage, degraded water quality, new treatment facilities, uncertainty of supply, and lost hydropower. Indeed, the predicted changes to California's precipitation and water supply caused by global warming — diminished snowfall, more rapid snowmelt, increased surface evaporation — likely will counsel against removal of existing storage reservoirs such as Hetch Hetchy.³⁶

Yet, as an environmentalist, I am pulled toward a different conclusion: That restoration of Hetch Hetchy Valley would be an acknowledgement that we erred in destroying Muir's "Tuolumne Yosemite" for selfish and parochial needs and that we have the integrity and courage to bear the costs of our

34. Muir, *supra* note 20, at 813.

35. Act of October 1, 1890, § 2, 26 Stat. 650.

36. See Maurice Roos, *Accounting for Climate Change*, in CALIFORNIA DEPT. OF WATER RESOURCES, CALIFORNIA WATER PLAN UPDATE 2005, Bulletin 160-05, at 4-611, available at <http://www.waterplan.water.ca.gov/docs/cwpu2005/vol4/vol4-globalclimate-accountingforclimatechange.pdf>.

ancestors' misdeeds. What is right for Mono Lake and the San Joaquin must also be right for Hetch Hetchy.³⁷

Earlier this year, I was invited to give the opening remarks for a conference on California water law and policy sponsored by students from three Bay Area law schools. I decided to dedicate the conference to the memory of four extraordinary individuals who left lasting marks on the landscape of our field and who are among my personal heroes — Jean Auer, John Krautkramer, Adolph Moskovitz, and Marc Reisner whom we honor tonight.³⁸ When I turn to these models for guidance, I don't find much help. Adolph and John, I am quite sure, would come to opposite conclusions — although Adolph might be tempted to stick it to San Francisco (and me) for the *amicus curiae* brief we filed with the California Supreme Court in the Mono Lake litigation.³⁹ Jean would probably struggle over the issue as I do. And I'm just not sure about Marc.

Marc was first and foremost an environmentalist, and he therefore probably would have supported restoration. (Marc also was fond of reminding the residents of our often smug city that the very first Peripheral Canal was the Hetch Hetchy Aqueduct.) But he also was a pragmatist, and the costs of restoration and changing San Francisco's point of diversion likely would have given him pause. Indeed, Marc may have given San Francisco some credit for being a good steward of the Tuolumne River below O'Shaughnessy Dam as well.

Then again, Marc was a romantic. And the prospect of walking on the floor of Hetch Hetchy Valley (even through the accumulated muck) and gazing upward to watch the waters of Wapama and Tueeulala Falls cascade over the canyon rim and flow into the Tuolumne River would have excited his imagination. Looking today at Hetch Hetchy Reservoir, I think, Marc would peer beneath the dark and still waters to see a deep river flowing. He would see a river that ripples with lament and anticipation.

37. See Jane Kay, *It's Rising and Healthy: Three Decades Ago, A Bunch of College Students Reported On and Worried About the Fate of Mono Lake. This Month, They Celebrated Its Recovery*, S.F. CHRON., July 29, 2006, at A1; *San Joaquin River: Compromise Reached on Restoration Bill*, S.F. CHRON., Sept. 28, 2006, at B2.

38. Brian E. Gray, *Introduction and Dedication*, 57 Hastings L.J. 1237 (2006).

39. See *National Audubon Society v. Superior Court*, 33 Cal. 3d 419 (1983).



**"Heaven Shines on Puget Sound"
Seattle, Washington
June 2003**

By Brad Daniels

* * *